1949. **File No.** O. Prev. of Prost 49

Legal Department

A BRANCH

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Subject:— Opinions under the Bombay Prevention of Prostitution Act 1925

P-9/E

File No. O. Prev. of Prostitution/49

Gen. 194

252-H

~~C.P. Files.~~

Offences of Prostitution/20

Legal Department File No.7.....

Sr. No.	R.I./C No.	Subject	Pages.

Sub. Prevention of Prostitution Act, 1923.

1-	R.I.No.1106/35-1-40 C.No. 1048/35-1-40	Whether it is necessar to prove carnal inter-course in order to prove that a person lived on the earnings of prostitution	1-4
2.	Misc No. 327 of 1940 dt. 8-8-40	R.F. Fairbrother Vs. The Comsr. of Police	5-10.

MK

SO dated 4-6-40.

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Office of the R.L.A.

The question was recently considered by the R.L.A. in his opinion No. 970 dated the 29th January 1948 in connection with the Bill to amend the Bombay Prevention of Prostitution Act, 1923. It was then accepted by the Committee appointed to examine the Act (which was presided over by the Chief Presidency Magistrate) that, for a conviction under section 8, it was necessary to prove actual carnal intercourse and the Committee recommended that it should be provided that such intercourse shall not be necessary, provided that the court is satisfied that there is other evidence to prove that the accused was living on the earnings of prostitution. With reference to this statement, the R.L.A. observed as follows: "It does not appear necessary in all cases for obtaining a conviction under the section to prove actual carnal intercourse. The R.L.A. has not come across any decision of the High Court under the Act or the I.P.C., which lays down that proof of actual carnal intercourse is necessary for conviction in every such cases..... A provision of this kind may, by implication, suggest that proof of carnal intercourse is necessary in general to prove prostitution. That would prove inconvenient."

2. The Police have apparently proceeded upon the
v of the law hitherto accepted and endorsed by the
tee that, in order to prove that a person lived
rnings of prostitution, it was necessary to
\ intercourse. The High Court has not said
iew of the law is wrong. My own
t the view is wrong, and if authority
would cite the case of R. v De Munck

(1918, 1 K.B. 635).. The judgement in that case is very short and is reproduced below for the information of H.D.H-

"In this case the appellant was convicted under an indictment containing twelve counts framed under six three different Act of Parliament, but the only question which the Court has to determine is whether that which the appellant did, or attempted to procure her daughter to do, amounts to procuring or attempting to procure her daughter to become a common prostitute. The evidence shows that during a period of some months the appellant permitted her daughter to being men to the appellant's house and to be in private with them in circumstances which would lead to to the inference that she had repeatedly had sexual intercourse with them; but it was conclusively proved that the girl was virgo intacta in the limited sense that she had never had ordinary sexual intercourse with any man.

"We have to decide what is a prostitute or what is prostitution. The argument advanced on behalf of the appellant practically was that the offering by a woman of her body for the gratification of the sexual passions of men, even if it is done as a regular trade, indiscriminately and for gain, is not prostitution unless the man's passions are gratified by the act of sexual connection and not otherwise. We have come to the conclusion that contention is not well founded. It was advanced before the learned commissioner at the Central Criminal Court and he laid down the law practically as we are now going to lay it down, and we, therefore, uphold his decision. The Court is of opinion that the term 'common prostitute'

Court is of opinion that the term 'common prostitute' in the statute is not limited so as to mean only one who permits acts of lewdness with all and sundry, or with such as hire her, when such acts are in the nature of ordinary sexual connection. We are of opinion that prostitution is proved if it be shown that a woman offers her body commonly for a lewdness for payment in return. There was ample evidence that this girl did that, and that the appelant know what she was doing, and procured her for this particular conduct.

"The appeal will therefore be dismissed."

I would, therefore, suggest that a communication may be addressed to the High Court bringing to their notice that the course of investigation adopted by the police proceeded upon the view of law that carnal intercourse was necessary to prove prostitution and that it is presumed that the High Court does not endorse that view and that suitable instructions should be issued to the police upon the presumption being confirmed by the High Court.

P.M.LAD.

O.O.

Remembrancer of Legal Affairs.

U.O. to H.D. No. 1048 dated the 28th January 1941

[illegible]

SC dated 4-6-'50.

Messrs. Little & Co.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

Misc. No. 317 of 1948.

G.W.Paterpaker.....Petitioner,

Versus

The Commissioner of Police & another .....Resp---

Rao Bahadur Coelho for the Petitioner.

The Advocate General for the Respondents.

Coram:- Tendolkar J.

8th February 1949.

ORAL JUDGMENT:-

This is a rule issued against the Commissionr of Police and Deputy Commissioner of Police, Crime Branch, (I) C.I.D.;for a writ of certiorari and for an order under section 45 of the specific Relief Act in respect of an order dated the 27th of November 1948, deporting the Petitioner from Greater Bombay. That order recites "WHEREAS it has been made to appear to me that you reside in, use of frequent a room on the ground floor of Mahavir Building, 238 Khetwadi Main Road, Bombay, in which the business of a common prostitute is conducted" and thereafter proceeds to state that in exercise of the powers conferred under section 9(1) of the Bombay Prevention of Prostitution Act, 1923, the Petitioner is directed to remove himself outside Greater Bomba within eight days and not to return to Greater Bomba without the premission of the Commissioner of Police. The Short point for determination is whether such an order is competent under section 9(1), of the Bombay City Police Act, 1923. That section isin these terms:-

"The Commissioner of Police may at any time cause a notice to be served upon any person who occupies or manages or acts or assists in the management of, or upon any woman who resides in, uses of frequents, any house, room of place in the Greater Bombay in which the business of a common prostitute -- is carried on, requiring such person of woman after a date to be mentioned in the notice which shall not be less than seven days from thedate of the notice, not to reside in, use or ~~~~ frequent any street or place specified in the notice, or~~~~ directing such person or woman after a date to be mentioned and fixed as aforesaid to remove himself or be self to such place, whether within or without the greater Bombay, by such route or routes and within such time as the commissioner of Police shall prescribe" The power, the reforce, to issue an order of the nature w'ich the Commissioner of Police has issued in this case devolves upon the Commissioner ~~ in two classes of cases:(1) In the case of any person "who occupies ~~ manages or acts or assists in the management of "What may be shortly described as a brother, and (2) in the case of "any woman who resides in uses or frequents" a brothel. The recital in the present order is appropriate to action against a woman; but the order is made not against a women but a man. The Advocate General has contended that the order can be made against any person, whether a man or a woman, is in the first instance, the same viz."not to reside in, use or frequent any street or place specified in the notice" From this fact he wants me to hold that the legislature considered that the essential element of occupation or management of a brothel was residence in or using or frequenting an such place , whether that is so or not appears to my mind to be irrelevant. Even assuming that to be the essential element, there are other elements present, and it could not be stated from the fact that a person resides in, uses or frequents a brothel that he occupies, manages, or acts, or~~ assists in the management of such a brothel The word "occupy"

which has been used in connection with any portion is in my opinion used in the sense of occupying the whole house or tenement which is used as a brothel, and not in the sense of residing therein as is used as a brothel, and not in the sense of residing therein as one of the many inmates thereof., while the "residence" in the case of a woman is used in contra-distinction to such "occupation" of the entire brothel and only to indicate residence along with other persons in the brothel. There is, in my opinion, therefore, no jurisdiction for the Commissioner of Police to make an order against a man under section 9(1) of the Bombay Prevention of Prostitution Act, on the ground that he resides in, uses or common prostitute is carried on. The order in the present case is thus without jurisdiction.

That being, so no doubt the order is liable to be set aside. But the Advocate General has contended that a petition of this kind asking for a writ of certiorari and also for relief under section 45 of the Specific Relief Act is not competent. The contention is that for ~~the~~ invoking either relief it is incumbent upon the Petitioner to state that he has no other adequate remedy and therefore the Advocate General submits that the Petitioner must in presenting a Petition make up his ~~make up his~~ mind whether he wishes to ask the remedy by way of a writ of certiorarior or by way of an order under section 45 of the Specific Relief Act. In my opinion, it is not necessary for the Petitioner to do so. I see no reason why he should not ask for two remedies, only one of which may ultimately be granted to him. It is for the court to determine which remedy is appropriate and not for the Petitioner. It is true to say that neither of these two remedies will be granted if there is any other adequate remedy; and therefore the Court will not proceed to make an order under both the heads but will make an order either under the one or the other which may be appropriate to the facts of the given case. I have held in this case that the Order is without jurisdiction. In my opinion the

Contd.

Commissioner of Police in making an order which affects the personal liberty of a subject acts in a quasi-judicial character. A writ of certiorari will, therefore, issue and the order will be set aside. The Rule will be made absolute with regard to the writ of certiorari and will be discharged with regard to the relief under section 45 of the Relief Act. The Respondents to pay the costs of the Petitioner.

HIGH SEAL
OF THE HIGH COURT
AT BOMBAY

Certified to be a true copy
this 6th day of April 1949.

Sd/- A. N. Narayan Iyyer
For Prothonotary & Senior Master.

MM

5C dated 4-6-'50.

HIGH COURT (S)
~~H Ith court~~
O.O.C.J
~~O.O.C.J.~~

Misc. No. 217 of 1948.

R.W.Paterpaker ----------Petitioner.

V/S-

The Commissioner of Police

and Anr.....respondents.

Certified copy of

Oral Judgment.

Delivered by the Hon'ble Mr. Justice

Tendolkar on 8th February 1949.

MM

SC dated 4-6-'56.